

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KIERA H BELL**  
Claimant

**LAKE MACBRIDE GOLF CLUB AND  
EVENT**  
Employer

**APPEAL 20A-UI-10295-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Respondent (5)**

Iowa Code § 96.4(3) - Able and Available  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

On August 17, 2020, Lake Macbride Golf Club and Event (employer/appellant) filed an appeal from the August 6, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits based on a finding no offer of work with employer was made.

After due notice was issued, a telephone conference hearing was held on October 9, 2020. Claimant did not register a number for the hearing and did not participate. Employer participated by owner Rich Currie.

Official notice was taken of the administrative record.

**ISSUES:**

Did the claimant refuse to apply for or accept an offer of suitable work?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer in the spring of 2019. This was a seasonal position where claimant would work as a waitress one or two Fridays a month from approximately April through August. Employer contacted claimant and others who worked in the waitressing position in March 2020 to see if they would like to work again that season. Employer made this offer to claimant via text, to the number it had used in the past. Claimant would have had the same position at the same rate of pay if she returned. However, employer never heard back from claimant regarding a return to work. Employer knew claimant had a job at another restaurant and assumed she was busy working that job. Around the end of the 2020 season, employer learned claimant had lost her job at the other restaurant and contacted her again to see if she wished to work. Claimant accepted the offer and worked once or twice before the season ended.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the August 6, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits based on a finding no offer of work with employer was made is MODIFIED with no change in effect.

The initial offer of work which claimant did not respond to was not during the benefit year and so is not disqualifying. The second offer of work was accepted by claimant. There is no indication claimant was unable or unavailable for work generally during the period in question. Claimant is therefore eligible for benefits, provided she meets all other eligibility requirements.

Iowa Code § 96.5(3)a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (a) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Iowa Admin. Code r. 871-24.24(1)a provides:

- (1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The initial offer of work, which claimant did not respond to, was made in March 2020. Since this offer and the accompanying non-response – which may be considered a refusal – occurred outside the claimant's benefit year, it is not disqualifying. The second offer of work did occur during the benefit year but was accepted, so it too is not disqualifying. Furthermore, there is no indication that claimant was unable or unavailable for work during the time in question.

#### **DECISION:**

The August 6, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits based on a finding no offer of work with employer was made is MODIFIED with no change in effect.

The initial offer of work which claimant did not respond to was not during the benefit year and so is not disqualifying. The second offer of work was accepted by claimant. There is no indication claimant was unable or unavailable for work generally during the period in question. Claimant is therefore eligible for benefits, provided she meets all other eligibility requirements.



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October 15, 2020  
Decision Dated and Mailed

abd/sam